

**TWENTY-TWO BEST PRACTICES
FOR ESTABLISHMENT AND OPERATION OF LOCAL
DECOMMISSIONING COMMUNITY ADVISORY BOARDS**
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Section 108 of the Nuclear Energy Innovation and Modernization Act (NEIMA) requires the Nuclear Regulatory Commission (NRC) to submit a report to Congress "identifying best practices for establishment and operation of local community advisory boards" (CABs) regarding the decommissioning of nuclear power plants. NRC will be conducting eleven public meetings around the country to obtain public input on what constitutes Best Practices for such local CABs.² Here is NRC's schedule:

- August 21, 2019 – Palisades (Michigan)
- August 26, 2019 – Humboldt Bay (California)
- August 27, 2019 – Diablo Canyon (California)
- August 29, 2019 – San Onofre (California)
- September 10, 2019 – Vermont Yankee (Vermont)
- September 11, 2019 – Pilgrim (Massachusetts)
- September 24, 2019 – Kewaunee (Wisconsin)
- September 26, 2019 – Zion (Illinois)
- October 3, 2019 – Oyster Creek (New Jersey)
- October 10, 2019 – Crystal River (Florida)
- TBD – Indian Point (New York)

The following are 22 Best Practices that NRC should adopt, and that State and local communities can implement now.

**TWENTY-TWO BEST PRACTICES FOR ESTABLISHMENT AND OPERATION OF LOCAL
DECOMMISSIONING COMMUNITY ADVISORY BOARDS**

1. **Best Practice Comment: Primary Function of an "Advisory Board" Must be "Advisory."** By definition, the function of a community advisory board is to provide advice or recommendations to a decision-maker. All NRC advisory committees meet this prime directive, and it is mandated by the Federal Advisory Committee Act for all Federal advisory boards³ Many States have similar laws and all of them make advice

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² NRC- NEIMA <https://www.nrc.gov/waste/decommissioning/neima-section-108.html>

³ 5 U.S.C. App.2. See also NRC regulation 10 C.F.R. Section 7.2.

the central function of any advisory entity. While FACA and State laws do not directly apply to NEIMA, they are excellent guides for identifying "best practices" for any advisory board.

2. **Best Practice Comment: NRC Should Incorporate Federal Advisory Committee Act Principles as NEIMA Best Practices for Local Community Advisory Boards:**⁴

The provisions of FACA are an excellent starting point the "establishment and operation" of a CAB. These include principles regarding the establishment and purpose of any advisory board, charter filing and contents, specification of objective and scope, committee procedures, public notice, open meetings and decisions, recordkeeping, public access and budgeting. NEIMA best practices should fully follow FACA principles unless NRC articulates a very good reason to vary from them.

3. **Best Practice Comment: In Order to be Most Effective, an Advisory Board Must be Appointed by Persons Being Advised (i.e., the Advisees):** The best Advisors (i.e.,

advisory board) must be someone the Advisee is willing to listen to and consider. The CAB and its members need to have the confidence of, and thus ought to be selected or designated by, the Advisee(s), i.e., the decision-maker(s) who are seeking the advice, and to whom the advice is to be given. If multiple decision-makers are being advised (e.g., Governor, State Legislatures, relevant regulatory agencies, local governmental entities, Labor unions, Native American communities) then each decision-maker must buy-in to the CAB and have the opportunity to help select or designate CAB members.

4. **Best Practice Comment: CAB Should Serve the Community:** Community advisory boards (CABs) should serve the community that is affected by the decommissioning. An Operator/Licensee can hire its own consultants and advisors (if it really wants advice). A "best practices" CAB provides advice to the community.

5. **Best Practice Comment: CABs Should be Chartered, Established, and Operated By the Affected State and Local Decision-Makers, Not the Licensee:** See comments 3 and 4 above. The Vermont Nuclear Decommissioning Citizens Advisory Panel (formed by State law) is a good example.⁵

6. **Best Practice Comment: Avoid Sham Advisory Boards: "Engagement Panels" Created To "Inform" the Public and To Provide a "Community Forum" Are Not Advisory Boards and Should be Avoided:** A CAB created by the nuclear power plant operator, for the nuclear power plant operator, with the mission of "educating the public" for the nuclear power plant operator, is NOT serving the community and is not a community advisory board. Instead, it is just another a public relations exercise. Nuclear plant operators already have plenty of lobbyists, PR people, government

⁴ FACA applies to federal advisory committees. Nevertheless, FACA is an authoritative statement by the U.S. Government as to what constitute "best practices" for an advisory committee. FACA addresses many topics that are directly relevant to NRC's NEIMA Section 108 study, such as the "establishment and purpose of advisory committees," the "charter" of the advisory committee, and the "advisory committee procedures; meetings; notice; publication; [and] regulations." Even though NEIMA applies to "local" community advisory boards, most of the FACA provisions (open meetings, public notice, public right to participate, the keeping of minutes, making decisions in public, making records public, avoiding conflicts of interest) are either directly essential to local CABs, or can and should easily be adapted to a local CAB.

⁵ <https://publicservice.vermont.gov/electric/ndcap>

relations employees, etc. to represent and push the operator's interests. Community advisory boards should serve the public decision-makers.

7. **Best Practice Comment: Advisee(s) Must Actually Want Advice From the CAB:** The entities or persons seeking the advice (Advisees) must actually want that advice. CAB's should not just be "for show." The Advisees must cooperate with the CAB and at least listen to its advice. The Advisees must meaningfully support the "establishment and operation" of the advisory board. If these conditions are absent, then it is a "best practice" NOT to create an advisory board. In such circumstances, the CAB is a sham or just a public relations ploy, and its "advice" is simply another "comment" from another interest group.
8. **Best Practice Comment: Members of Advisory Board Must Have Some Competence in Topics Under Advisement:** In order for advice to be helpful, an Advisor should have some knowledge, skills, experience, and/or competence in the topic(s) it is advising on. No one hires an advisor who lacks competence in the topic under advisement. Of course, the "topics" for a CAB are not limited to technical nuclear decommissioning expertise. Not at all. But members of the CAB should have some competence in the topics specified by the Advisees in the charter.
9. **Best Practice Comment: CAB Must Have Adequate Resources:** An effective Advisor should have the necessary logistic and technical support to facilitate its ability to provide competent and timely analysis and advice. A CAB should be able to select and to retain its own technical consultants on appropriate topics. The Advisees (who are the ones seeking and benefiting from the advice), should provide appropriate funding. If this is the public (as it usually should be) then public funding is appropriate.
10. **Best Practice Comment: CAB Must Have Long-Term Stamina Necessary for the Long-Term Decommissioning Process:** An effective CAB must have the stamina and commitment to operate for the duration of the decision-making processes that will be needed by State and local stakeholders during the decommissioning. This may be 20 to 60 years. The term of CAB members should be sufficient to allow each one to get up to speed and to contribute meaningfully and each member should be required to commit to devoting the needed time and effort to the job. Terms should be staggered so that the CAB will maintain its institutional knowledge.
11. **Best Practice Comment: CAB Members Should Not Have Conflicts of Interest:** Members of the advisory board should have no conflicts of interest with regard to the topics under advisement. This does not merely cover individuals who have direct financial ties with the Operator/Licensee. CAB members should not be involved in organizations that are soliciting or negotiating deals or favors (e.g., land grants, donations, contractual concessions) with the Operator/Licensee.
12. **Best Practice Comment: CAB Members Should be Selected in an Open Process:** The members selected or designated for the CAB should be evaluated and appointed via a public and independent process in a way that provides the public, and the Advisees, with confidence that the selection has been fair and open. The criteria for membership on the CAB should be fair and public. It may be appropriate to allow the public to comment on the qualifications of the applicants before final selections are made.

13. **Best Practice Comment: All CAB Meetings Should Be Public:** The CAB should conduct all meetings and make all decisions (e.g., deciding on what recommendation and advice to give) in public. Closed meetings or discussions by a quorum should be prohibited. Public notice of each CAB meeting should be published in advance. During any such meeting the CAB should not be allowed to address an unannounced/new topics not on the published agenda and not previously announced to the public.
14. **Best Practice Comment: CAB Should be Independent:** Advisors, while designated by the relevant decision-makers, must have the independence to needed to issue tough and realistic advice. Specific governmental entities (e.g., the Governor, or the Attorney General, or the State Energy Commission or Public Utility Commission) should have the right to designate a member of the CAB who has their confidence. The nuclear power plant operator should likewise be able to designate a member. But the nuclear power plant operator should NOT have the power, directly or indirectly, to veto members of the CAB or recommendations or advice by the CAB.
15. **Best Practice Comment: CAB Topics Should be Those Upon Which the Advisees Must Make Decisions, and Upon Which the Advisees Have Asked for Advice:** The best CAB will focus on topics that are relevant to the decisions under advisement, i.e., issues the decision-makers (the Advisees) must decide. The charter should instruct the CAB as to the topics upon which advice is being sought. These could include state and local governmental decisions relating to environmental protection, safety, economic impacts, taxation, business and workforce impacts, traffic, housing, land use, facility reutilization, and zoning decisions. The Advisees should determine the scope of the CAB's duties and topics it should consider.
16. **Best Practice Comment: CABs Should Stick to Topics Relevant to Needed Decisions:** The CAB should focus its inquiries, discussions, and advice to topics relevant to the decisions that the Advisees must make. The CAB should not be a "roving advisor" issuing unsolicited advice on any topic that suits its fancy. For example, the CAB should not waste time and effort on giving advice on topics (e.g., whether NRC should licensee Yucca Mountain) that are utterly beyond the legal or practical purview of any decisions that the Advisees (e.g., the State and local stakeholders) can make. If a CAB believes that additional topics should be added, then it can ask the Advisees to expand its charter accordingly.
17. **Best Practice Comment: The Beneficiaries of the Advice (Advisees) Should Pay the Costs of the CAB:** The entities or persons who created the CAB and who are to be the recipients and beneficiaries of the CAB's advice, should pay the logistical and technical support costs for the operation of the CAB. If the "community" advisory board (CAB) is really for the benefit of the "community" and if state and local governmental entities are the primary Advisees, then the CAB should be publicly funded. This should be done in an open process (e.g., with an annual budget) with full disclosure to the public.
18. **Best Practice Comment: Advisory Boards Should Have Authority to Require the Nuclear Power Plant Operator/Licensee to Provide Information, Answer Questions, and Attend Meetings:** It would greatly enhance the productivity of the CAB, and promote better advice, if the CAB can get dependable information from the key players. Thus, the CAB should have the power to ask questions, and obtain legally binding answers from, the nuclear power plant operator,

19. **Best Practice Comment: The Entities That Create the Advisory Board (Advisees) Must Cooperate with It and Provide It Timely and Reliable Information:** The entities that create the advisory board, and that are seeking its advice, should be willing to cooperate with it. Generally this will include the relevant State and local regulators and governmental entities that have significant roles and decisions to make during the decommissioning process.
20. **Best Practice: NRC Must Be Willing to Cooperate with The CAB:** NRC will likely be an important source of information for the CAB. While the NRC is not subject to the requirements of any CAB, it would be highly beneficial if the NRC would cooperate with CABs and provide relevant information, and NRC personnel, to help the CAB function. (Local CABs, by definition, provide advice to state and local stakeholders, not to NRC.)
21. **Best Practice Comment: NRC Should Issue a Guidance Document⁶ Providing State and Local Communities with a Summary of Best Practices for the Establishment and Operation of Local Community Advisory Boards:** In addition to simply submitting a report to Congress pursuant to NEIMA Section 108, NRC should issue a guidance document identifying and summarizing the best practices for the establishment and operation of local community advisory board. This guidance should be designed for the communities facing the decommissioning of a nuclear power plant (not the Licensee). Thus, the guidance should be designed for the State and local governmental officials and regulatory bodies, the local chamber of commerce, local school districts, the local NGOs and public interest groups, appropriate labor unions, and relevant Native American communities.
22. **Best Practice Comment: As Soon As NRC Learns of a Planned Decommissioning, NRC Should Convene a Public Meeting of All State and Local Stakeholders to Inform Them of the Guidance and Encourage the Establishment of a CAB:** As soon as the NRC learns (formally or informally) that a nuclear power plant is planning or likely to close, the NRC should notify and inform State and local communities and stakeholders, and should invite them to a meeting, in the vicinity of that nuclear power plant. At that meeting, NRC should present and explain the best practices for the establishment and organization of local decommissioning CABs and should encourage the community to consider forming a CAB.

⁶ NRC has already issued some guidance on decommissioning advisory boards. See pages 33 – 38 ("Stakeholder Involvement") of the "Power Reactor Transition From Operations to Decommissioning: Lessons Learned Report" issued by NRC in October 2016. ADAMS ML16085A029. This report is weak and is based on only a few (4) sites. Note also that NRC mandates a community advisory process in one limited situation. See 10 C.F.R. Section 20.1403(d).